



State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



Norman Fellows  
RFD #2  
Newport, NH 03773

Re: Septic System Installation on  
Underhill Property, Grantham, NH

**NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
No. AF 01-014**

**April 5, 2001**

**I. Introduction**

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Norman Fellows, pursuant to RSA 485-A:43 and Env-C 601.05. The Division is proposing that fines totaling \$ 6,500 be imposed against Norman Fellows for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

**II. Parties**

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Norman Fellows is an individual having a mailing address of RFD #2, Newport, NH 03773

**III. Summary of Facts and Law Supporting Claims**

1. RSA 485-A:29-44 authorizes DES to regulate the subdivision of land and the construction, maintenance, and repair/replacement of individual sewage disposal systems ("septic systems"). Pursuant to rulemaking authority conferred therein, the Commissioner of DES has adopted Env-Ws 1000 to implement this program.
2. Pursuant to RSA 485-A:43, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 29-44, including any rule adopted thereunder. Pursuant to this section, the Commissioner has adopted Env-C 604 to establish the schedule of fines for such violations.
3. Jane Underhill is the owner of property located at 426 Main St., Route 10 South, Grantham, NH, more particularly described on Town of Grantham Tax Map 237 as Lot 30 ("the Property")
4. On November 21, 2000, the Town of Grantham discovered that Norman Fellows was replacing a septic system on the Property. The system was within 75 feet of surface waters
5. When Mr. Fellows was asked if he had submitted a design for the septic system to DES for approval, he replied that he had not done so.

6. When Mr. Fellows was asked if he had received an installer's license from DES, he replied that he was not currently licensed to install septic systems.
7. On November 21, 2000, the Town of Grantham issued a cease and desist order to Norman Fellows to prevent further illegal work on the septic system on the Property.
8. RSA 485-A:32, I, prohibits construction of a septic system without prior approval of the plans and specifications of the system by DES.
9. RSA 485-A:36, I, requires any person engaging in the business of installing septic systems to obtain an installer's permit from DES. RSA 485-A:36, II allows a person desiring to install or repair a septic system for his own domicile without obtaining an installer's license.
10. Env-Ws 1003.10 allows certain septic systems to be repaired or replaced "in kind" without prior approval of plans. Env- W s 1003.10( c) requires plans to be submitted for approval prior to repairing or replacing a septic system that is within 75 feet of surface water and requires a test pit to be dug immediately adjacent to the effluent disposal area of the septic system.
11. Env-Ws 1003.10(g) requires all repair and replacement work to be done by a state permitted installer, except that an individual may perform repair or replacement work on the septic system serving that person's own private domicile.
12. Env-Ws 1003.10(i) requires the test pit data and a sketch of a repaired/replaced septic system to be submitted to DES.
13. Env-Ws 1003.10 (j) requires a completed questionnaire to be submitted after repair/ replacement of "a septic system that provides information on the location of the system and other information pertinent to the reason(s) why the system needed to be repaired/replaced.
14. At the time of the work done by Mr. Fellows, there was no evidence that a test pit had been dug near the effluent disposal area of the septic system.
15. DES has no record of receiving test pit data, a sketch of the system, or a completed questionnaire for the system.

#### **IV. Violations Alleged**

1. Norman Fellows has violated RSA 485-A:32, I, and Env-Ws 1003.10(c) by installing a septic system on the Property without receiving prior approval of the plans for such system from DES.
2. Norman Fellows has violated RSA 485-A:36, I, by installing a septic system on the Property without having obtained an installer's permit from DES.
3. Norman Fellows has violated Env-Ws 1003.10(lc) by failing to dig a test pit immediately adjacent to the effluent disposal area of the septic system on the Property prior to repairing or replacing the system.

4. Norman Fellows has violated Env-Ws 1003.10(i) by failing to submit test pit data and a sketch of the repaired/replaced septic system on the Property.
5. Norman Fellows has violated Env-Ws 1003.10(j) by failing to submit a completed questionnaire for the repaired/replaced septic system on the Property.

#### **V. Proposed Administrative Fines**

For the violation identified in IV. 1. above, Env-C 604.02(b) specifies a fine of \$1,500.

2. For the violation identified in IV.2. above, Env-C 604.02(h) specifies a fine of \$2,000.
3. For the violation identified in IV.3. above, Env-C 604.02(s) specifies a fine of \$1,000.
4. For the violation identified in IV.4. above, Env-C 604.02(s) specifies a fine of \$1,000
5. For the violation identified in IV.5. above, Env-C 604.02(s) specifies a fine of \$1,000.

**The total fine being sought is \$6,500.**

#### **VI. Hearing, Required Response**

You have the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, May 28, 2001 at 9:00 a.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, you are required to respond to this notice.** Please respond **no later than May 4, 2001**, using the enclosed colored form as follows:

1. If you plan to attend the hearing, please sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form.
2. If you choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If you wish to discuss the possibility of settling the case, please sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate your interest in settling.

You are not required to be represented by an attorney. If you choose to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

**If you wish to have a hearing but are unable to attend as scheduled, you must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled.** If you do not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be conducted in your absence in accordance with Env-C 204.09.

## VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that you committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that you committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

\* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that you prove, by a preponderance of the evidence, applies in this case:**

- 1 The violation was a one-time or non-continuing violation, **and** you did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** you did not benefit financially, whether directly or indirectly, from the violation.

At the time the violation was committed, you were making a good faith effort to comply with the requirement that was violated.

- 3 You have no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
- 4 Other information exists which is favorable to your case which was not known to the Division at the time the fine was proposed.

### \*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\*

**The hearing that has been scheduled is a formal hearing.** The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is your opportunity to present testimony and evidence that you did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If you have any evidence, such as photographs, business records or other documents, that you believe show that you did not commit the violation(s) or that otherwise support your position, you should bring the evidence to the hearing. You may also bring witnesses (other people) to the hearing to testify on your behalf.

**If you wish to have an informal meeting to discuss the issues, you must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

  
Lo<sup>5</sup> **COPY** Harry T. Stewart, Director  
Water Division

Enclosure (*NHDES Fact Sheet #CO-2 2000*)

cc: Gretchen Rule, DES Enforcement Coordinator  
Susan Alexant, DES Hearings and Rules Attorney